

147 FERC ¶ 61,094
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 5, 2014

In Reply Refer To:
Dynergy Kendall Energy, LLC and
Dynergy Marketing and Trade,
LLC
Docket No. ER14-1585-000

Neil L. Levy
King & Spalding LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006

Dear Mr. Levy:

1. On March 25, 2014, Dynergy Kendall Energy, LLC (Dynergy Kendall) and Dynergy Marketing and Trade, LLC (DMT) (together, the Dynergy Companies) filed a request for a one-time, limited waiver of the procedural deadlines set forth in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of the Reliability Pricing Model (RPM) rules (Attachment DD) of PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff).¹ The waiver would allow the Dynergy Companies to apply for, and PJM to grant, a Competitive Entry Exemption² from the Minimum Offer Price Rule (MOPR) with respect to 85 MW of capacity from the Kendall County Generation Facility that was recently released from a long-term contract between DMT and Wisconsin Public Power Inc. (WPPI). Dynergy Companies request action as soon as possible, but no later than May 5, 2014 in order to obtain an exemption in time for the upcoming 2014 Base Residual Auction (2014 Auction). As discussed below, the Commission grants the requested waiver.

2. The MOPR is a PJM rule that imposes minimum offer prices on certain Generation Capacity Resources, in order to prevent price suppression.³ Under the PJM Tariff, a Capacity Market Seller seeking this exemption must submit its request, together

¹ PJM Interconnection, L.L.C., Intra-PJM Tariffs (Attachment DD), [OATT ATTACHMENT DD.5.14 Clearing Prices and Charges, \(12.0.0\)](#).

² *Id.*, § 5.14(h)(7).

³ PJM Tariff, Attachment DD, § 5.14(h)(1).

with the required documentation and officer's certification, no later than 135 days prior to the commencement of the offer period for the RPM auction in which it seeks to submit its Sell Offer.⁴ For the 2014 Auction, which is scheduled to commence on May 12, 2014, the deadline for submission of a MOPR exemption request was December 28, 2013.

3. The Dynegy Companies explain that until very recently, 85 MW of the capacity of the Kendall Facility that is controlled by DMT was sold through September 2017 under a Long-Term Capacity and Energy Purchase Contract (WPPI Contract), which was entered into by DMT's predecessor-in-interest and WPPI on December 13, 2000. The Dynegy Companies further explain that on February 28, 2014, DMT and WPPI entered into Amendment No. 6 to the WPPI Contract (Sixth Amendment) which reduces the amount of capacity sold to WPPI under the WPPI Contract by 85 MW as of May 31, 2017, thereby enabling DMT to offer the incremental capacity into the 2014 Auction for the 2017/2018 Delivery Year. In addition, the Dynegy Companies explain that while the portion of the Kendall Facility's capacity that is controlled by Dynegy Kendall has been offered and cleared in prior Auctions, the incremental capacity has not previously been offered into any RPM auctions, and would therefore be considered a new Generation Capacity Resource.

4. The Dynegy Companies request a one-time, limited waiver of the procedural deadlines set forth in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of Attachment DD to the Tariff in order to allow them to apply for, and PJM to grant, a Competitive Entry Exemption from the MOPR. In support of the request, the Dynegy Companies contend that their request for waiver is consistent with prior situations in which the Commission has granted a waiver.

5. The Dynegy Companies state that the underlying error was committed in good faith. According to the Dynegy Companies, prior to DMT and WPPI entering into the Sixth Amendment on February 28, 2014, the incremental capacity was committed to WPPI through September 2017 under the WPPI contract. Therefore, they explain, it was only upon execution of the Sixth Amendment, which occurred after the deadline for submitting MOPR exemption requests, that the incremental capacity was released to DMT, permitting the Dynegy Companies to offer the capacity into the auction.

6. The Dynegy Companies assert that the waiver request is "very limited in scope" because they are only requesting a one-time waiver of the procedural deadlines in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii), and are not requesting waiver of any of the substantive requirements applicable to Competitive Entry Exemptions set forth in Section 5.14(h)(7) of Attachment DD to the Tariff, including the requirements to provide supporting documentation.

⁴ *Id.*, § 5.14(h)(9)(ii).

7. The Dynegy Companies also assert that the requested waiver would remedy a specific problem, which is their current inability to obtain a MOPR exemption for the incremental capacity and the associated risk of such capacity not clearing in the 2014 Auction as a result of the Dynegy Companies' inability to provide the information required to apply for such exemption by the prescribed deadline.

8. In addition, the Dynegy Companies assert that granting the waiver request will not result in any adverse consequences, delay the 2014 Auction or interfere in the administration of the 2014 Auction, or affect PJM's or PJM's Independent Market Monitor's (Market Monitor) substantive determination as to whether the incremental capacity qualifies for an exemption from the MOPR. The Dynegy Companies further state that they have been authorized to represent that the Market Monitor does not oppose the request for limited waiver.

9. Notice of the Dynegy Companies' filing was published in the *Federal Register*, 79 Fed. Reg. 18,680 (2014), with interventions and protests due on or before April 15, 2014. PJM filed a motion to intervene on April 2, 2014. No protests or adverse comments were filed. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them, parties to this proceeding.

10. The Commission has previously granted market participants one-time waivers of tariff provisions in situations where: (1) the applicant was unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) granting waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁶

11. We find that good cause exists to grant the request for waiver. First, we find that the Dynegy Companies acted in good faith. The execution of the Sixth Amendment, which released the incremental capacity to DMT and permitted the Dynegy Companies to offer the capacity into the auction, occurred on February 28, 2014, after the deadline for submitting requests for exemption had passed. Thereafter, the Dynegy Companies promptly sought the Competitive Entry Exemption for the incremental capacity. Second, the requested waiver is a one-time waiver, and is limited in scope, in that it is limited solely to procedural deadlines for the 2014 Auction only and does not relate to the substantive requirements for the Competitive Entry Exemption. Third, the waiver will

⁵ 18 C.F.R. § 385.214 (2013).

⁶ See, e.g., *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014); *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 12 (2013).

remedy a concrete problem and enable the Dynegy Companies to seek a MOPR exemption for the incremental capacity in time to allow the Dynegy Companies to offer the capacity into the 2014 Auction. Fourth, we find that granting the requested waiver will not lead to undesirable consequences for PJM, the Market Monitor or any other third parties. According to the Dynegy Companies, they have been authorized to represent that the Market Monitor does not oppose the request.⁷ Furthermore, no other parties oppose the request.

12. Accordingly, we grant the Dynegy Companies' request for a limited, one-time waiver of the procedural deadlines set forth in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of Attachment DD to the PJM Tariff.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁷ Transmittal at 1-2.